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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/820,858	03/30/2001	David W. Cannell	05725.0844-00	3869

22852 7590 05/21/2002

FINNEGAN, HENDERSON, FARABOW, GARRETT &
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EXAMINER

FUBARA, BLESSING M

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 05/21/2002

7

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/820,858	CANNELL ET AL	
	Examiner	Art Unit	
	Blessing M. Fubara	1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13/11/02.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-152 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-152 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Examiner acknowledges receipt of paper number 6 filed 03/11/02.

A telephone call was made to Anthony Tridico/Louis M. Troilo on 05/09/02 discuss the election/restriction requirement in paper number 5 as requested by applicants. However, applicants were unavailable for a discussion.

Applicants' election with traverse of polyquaternium-10 and glucosamine is incomplete because applicants failed to elect between groups II and I. Applicants' argument that the Examiner "has not shown that examining the above groups together would constitute serious burden" is not persuasive because the prior art for group I may not be applicable to group and the search may require different search for the method claims even though the two groups be classified in the same class and subclass.

The election restriction requirement is reiterated below except that the requirement to elect between methods of claims 49 and 100 is dropped.

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-48, 151 and 152, drawn to composition comprising two quaternary ammonium group containing compound and a C₅ to C₇ saccharide unit containing compound and two compartment kit for treating keratinous fiber and where the first compartment holds the quaternary ammonium containing compound and the second compartment houses the C₅ to C₇ saccharide containing compound, classified in class 424, subclass 70.13.

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- II. Claims 49-150, drawn to method for treating keratinous fiber with a composition comprising quaternary ammonium containing compound and a C₅ to C₇ saccharide containing compound, classified in class 424, subclass 70.13.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product can be used for different methods as applicants themselves claim.
3. If applicants elect group I, applicants must further elect a single specific composition by electing one of the following quaternary ammonium groups:
- (A) The quaternary ammonium group of claim 9
 - (B) The quaternary ammonium group of claim 10
 - (C) The quaternary ammonium group of claim 11
 - (D) The quaternary ammonium group of claim 12
 - (E) Polyquaternium-16
 - (F) Polyquaternium-11
 - (G) Quaternized poly(vinylamine)
 - (H) Quaternized poly-4-vinyl pyridine
 - (I) Polyquaternium-6

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(J) Polyquaternium-7 and

(K) Amidomethicone

and by electing a specific monosaccharide or oligosaccharide or polysaccharide.

For example, **claims 23, 26 and 42 recite specific examples of monosaccharides.** The election of a specific quarternary ammonium containing compound and a specific monosaccharide or oligosaccharide or polysaccharide will define a specific composition for prosecution on the merits to which the claims shall be restricted to.

5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because each is capable of supporting different patents within the art, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Upon allowance of group I, claims 49-150 will be fully examined for patentability and if found to be allowable will be rejoined with group I.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blessing M. Fubara whose telephone number is 703-308-8374.

The examiner can normally be reached on 7 a.m. to 3:30 p.m. (Monday to Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on 703-308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3592 for regular communications and 703-305-3592 for After Final communications.

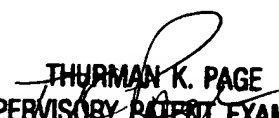
Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.


Blessing Fubara

Examiner

Technology Center 1600

May 9, 2002


THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600